IN THE

Supreme Court of the United States

MARCH TERM 1944

No.

GEORGE GOUMAS,

Petitioner,

—against—

K. KARRAS & SON and SS "KARRAS", her engines, tackle, appurtenances, etc.,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The Opinions Below.

The opinion of the District Court is found in R. 31-48. The opinion of the Circuit Court of Appeals not yet reported appears in the Appendix hereto.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered January 26, 1944. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 938, 28 U. S. C. A. Sec. 347(a).

Statement.

The statement of the case already given in the petition under the heading "Summary Statement of the Matter Involved" is hereby adopted and made part of this brief.

Specification of Errors.

First: The Circuit Court erred in deciding that the facts averred in the libel were insufficient in law to constitute a cause of action.

Second: The Circuit Court erred in deciding that the facts averred in the libel did not constitute a cause of action within the admiralty and maritime jurisdiction of the United States.

Third: The Circuit Court erred in deciding that the facts averred in the libel did not give rise to any maritime lien upon the S. S. "Karras."

Fourth: The Circuit Court erred in deciding that Section 971 of Title 49 U. S. C. A. did not apply to the cause of action alleged by the petitioner.

Fifth: The Circuit Court erred in affirming the order of the District Court dismissing the libel.

Summary of the Argument.

The points of the brief are summarized in the Subject Index.

ARGUMENT

POINT I.

The Circuit Court erred in deciding that the facts averred in the libel did not constitute a cause of action within the admiralty and maritime jurisdiction of the United States, and did not give rise to a lien upon the SS "Karras".

46 U. S. C. A., Section 971, *et seq.*, reads:

> "Any person furnishing repairs, supplies, towage, use of drydock or marine railway or other necessaries to any vessel, whether foreign or domestic, upon the order of the owner of such vessel or of a person authorized by the owner, shall have a maritime lien on the vessel which may be enforced by suit in rem, and it shall not be necessary to allege or prove that credit was given for the vessel."

Section 972 is as follows:

> "The following persons shall be presumed to have authority from the owner to procure repairs, supplies, towage, use of drydock or marine railway, and other necessaries for the vessel: the managing owner, ship's husband, Master or any person to whom the management of the vessel at the port of supply is entrusted * * *."

It is undisputed that the master of the vessel was authorized to contract for the procurement of seamen to operate the vessel. That seamen are certainly necessary to navigate and operate the ship is undisputed, for without the crew, the ship is powerless to sail and to accomplish its prime

purpose. It has been held that an agreement to furnish tugs and crews may be the basis of a maritime lien.

In the case of *Munson Inland Water Lines, Inc.* v. *Seidl*, 71 Fed. (2d) 791 (C. C. A. 7th), Evans, *Circuit Judge*, held:

> "The Court found the said libellants Seidl and Angwall, agreed with the Master to furnish tugs and crews at $25.00 per hour, and such agreed compensation was not to be dependent upon the success of the services, but was to be paid whether or not any of the barges were released or salvaged. This agreement did not defeat Seidl's and Angwall's liens, although it destroyed their asserted status as salvors and their liens as salvage liens."

Therefore, if a contract to furnish a crew is a maritime contract which gives rise to a maritime lien upon the vessel as a "necessary" within the purview of Section 971, then any breach of that contract is likewise maritime in nature, and if damages are sustained as a result of the breach, the Admiralty has the power to award damages flowing from the breach.

In the case of *The Electron*, 48 Fed. 689 (D. C. S. D. N. Y.), at page 690, the Court held:

> "It is urged, however, that the cross-libel is for a demand which could not be entertained in admiralty, because it is merely an action for damages for the breach of a contract for supplies. No doubt, if the court was without jurisdiction of the cause of action stated in the cross-libel, the motion should not be granted; but, though actions for damages and for misrepresentations and breaches of contracts for supplies may not be frequent, I cannot regard them as beyond the proper jurisdiction of the admiralty. In the case

of *The Eli Whitney*, 1 Blatchf. 360, though it was held that an action *in rem* would not lie for false representations which had been the inducement to the execution of a charter-party, there is no intimation that an action *in personam* would not lie for such a cause. The contract in this case, being for supplies, is a maritime contract, within the ordinary jurisdiction of the admiralty courts. Upon such a contract, and all its incidents, the rights and remedies of the parties are reciprocal. The contract being maritime, the admiralty, says CURTIS, *J.*, in *Church* v. *Shelton*, 2 Curt. 271, 274, 'will proceed to inquire into all its breaches, and all the damages suffered thereby, however peculiar they may be, and whatever issues they involve.' See, also *Cox* v. *Murray*, Abb. Adm. 342; *The J. F. Warner*, 22 Fed. Rep. 342; *The W. A. Morrell*, 27 Fed. Rep. 570; *The Baracoa*, 44 Fed. Rep. 102. In the latter case the action was for damages for breach of the stipulations of a charter-party, and, as respects jurisdiction, is indistinguishable from the present, though the form of remedy in this case is *in personam* only. The cross-libel is therefore properly brought, and falls within the rule; and the motion for stay of proceedings on the original libel, until security is given, is granted."

In view of the foregoing, and of the principles of law on which they rest, it is respectfully submitted that the services performed by the petitioner and the breach of contract by the respondents were of such character as to give rise to a maritime lien both under the General Admiralty Law and as "necessaries" under Section 971.

In *The Artemus*, 53 Fed. (2d) 672, at page 679 (D. C. S. D. N. Y.), Woolsey, *J.*, stated:

"It is thus clear that the restrictive meaning of other necessaries under the Act of 1910 has been enlarged by the wording of the Act of 1920, so that those words now cover not merely material things, but also services which are necessary for the operation or the preservation of the vessel."

In *The Gustavia,* 1830 D. C. S. D. N. Y. Fed. case No. 5876, 1 Blatch. & H. 189, a libel by a ship's broker against a foreign vessel for services, Betz, *J.*, said at page 191:

"By the term 'necessaries,' the law does not contemplate those things only which are indispensable to the safety of the vessel and her crew, but whatever a prudent owner, if present, would be supposed to have authorized, the master may order, and the vessel will be held responsible for them. *Webster* v. *Seekamp,* 4 Barn. and Ald. 352."

In the case of *The Pleroma,* 175 Fed. 639, at page 640 (D. C. S. D. Alabama), Toulmin, *District Judge,* stated:

"The master in a proper case may bind his vessel for necessaries. The test of his power is the needs of his vessel. When the necessity is shown for the supplies or repair, the rest is presumed, that is, that the vessel was used as a basis of credit, and that the law implies a lien. 'Necessaries' mean whatever is fit and proper for the service on which a vessel is indicated."

That the services were performed on land would not make them non-maritime. *The Ascutney,* 1922 D. C. D. Md. 278 Fed. 991, involving the shore expenses of a ship's agent.

POINT II.

The Circuit Court erred in deciding that the facts averred in the libel were insufficient in law to constitute a cause of action, and in affirming the order dismissing the libel.

The facts are undisputed that a contract was entered into between the petitioner and the claimant on behalf of the owners, K. Karras & Son, for the procurement of a crew for the SS "Karras". The petitioner's contention that the respondents and the Master breached the contract gives rise to a lien against the vessel and an *in personam* judgment for damages against the respondents.

Assuming, but not conceding, for the sake of argument, that no lien attaches to the vessel, nevertheless since the libel asked for a judgment *in personam* against the respondents, and since they appeared in the action, it was error for the Court to sustain the exceptions and dismiss the libel.

The libel herein was both *in rem* and *in personam* (R. 19). That both *in personam* and *in rem* relief may be joined in the same proceeding. It has been held that a Court could treat a suit begun *in rem* as one *in personam* where no injustice has been done thereby and the parties are before the Court. It is respectfully submitted that by the appearance of the proctors for the respondents and the claimant (R. 2, 23) the respondent K. Karras & Son submitted themselves to the general jurisdiction of this Court, and that the same constitutes a general appearance on behalf of the respondents as well as the claimant. It is conceded that the mere filing of a claim by the master did not constitute an appearance on behalf of K. Karras & Son, the respondent, but here we have more than that. Here the proctors have appeared for the respondents and the claimant.

In the case of *The Monte A.*, 12 Fed. 331 (D. C. S. D. N. Y.), at pages 336 and 337, Brown, *D.J.*, stated:

> "The libel in this case, for a breach of contract of affreightment, might have been framed both against the owner *in personam* and against the vessel *in rem*. It was the practice in this court, long before the adoption of the supreme court rules in admiralty, to conjoin these remedies in cases of charter-party and affreightment. Those rules, while providing for the joinder of remedies in regard to various other subjects, do not provide for this; and under rule 46 it is, therefore, left subject to the regulation of the several district and circuit courts; and the former practice of joining these remedies in this class of cases exists in this district, as well as in other districts, the same as before. *The Zenobia,* 1 Abb. Adm. 48; *The Shand,* 10 Ben. 294; *The Keokuk,* 9 Wall. 517; *The Clatsop Chief,* 8 Fed. Rep. 164.
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> "The pleadings in this case contain all the requisite allegations for the full hearing and determination upon the merits of the owner's liability as in a suit *in personam*. The only thing wanting is a prayer in the libel for a monition and personal judgment against him. An amendment to this effect is no change in the substantial cause of action, but only in the relief demanded. As both modes of relief might have been sought in the same libel, it seems to me that it is clearly within the power of the court to permit an amendment by adding such a prayer for relief *in personam*, and for a monition against the owner."

In the case of *The Ethel*, 66 Fed. 340, the Court held that where no prayer for a personal judgment was made, the Court could not grant the same, indicating that where, as in the instant case, the prayer for relief specifically asks for

judgment *in personam* against the respondent K. Karras & Son (fol. 19) the Court would have jurisdiction to render a judgment *in personam* against the respondents, and that to have dismissed the libel as not stating facts sufficient to constitute a cause of action was contrary to law. It is elementary that upon a motion of this type the allegations of the libel are to be accepted as true, and it is, therefore, respectfully urged that sufficient facts were set forth to constitute a cause of action in admiralty, both *in personam* against K. Karras & Son, and *in rem* against the SS "Karras."

In *The Guiding Star*, 1 Fed. 347, at page 348, Brown, *J.*, states:

> "It is true that there are certain cases in rem in which the libellant may join any number of demands, and in cases in personam ex delicto and ex contractu are not infrequently joined in the same libel (Dunlap's Admiralty 89)."

CONCLUSION

It is therefore respectfully submitted that the errors in law of the Court below, and the equities and justice of this case call for the exercise by this Court of its supervisory powers, and to that end a writ of certiorari should be granted and this Court should review the decision of the Circuit Court of Appeals for the Second Circuit and finally reverse it.

Respectfully submitted,

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